

### **REMARKS / ARGUMENTS**

Claims 1-45 are pending in the instant application. Claims 1, 10, 19, 28, 34 and 40 are independent. Claims 2-9, 11-18, 20-27, 29-33, 35-39 and 41-45 depend from independent claims 1, 10, 19, 28, 34 and 40, respectively. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,393,474 ("Eichert") in view of USPP 2002/0069278 ("Forslow") in view of USPP 2002/0022483 ("Thompson"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

### **REJECTION UNDER 35 U.S.C. § 103**

The MPEP states the following regarding the requirements for establishing a *prima facie* case of obviousness:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” See *id.*, § 2143.01. Furthermore, in order to render the claims obvious, the asserted prior art combination must **teach or suggest each and every claim feature**. See *In re Royka*, 490 F.2d 981 (CCPA 1974) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art)<sup>1</sup>; see also *In re Wada and Murphy*, Appeal 2007-3733, citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (A proper obviousness determination requires that an Examiner make “a searching comparison of the claimed invention – **including all its limitations** – with the teaching of the prior art.”)

If a *prima facie* case of obviousness is not established, the Applicant has no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

With these principles in mind, the Applicants now turn to the claim rejections in particular.

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<sup>1</sup> Emphasis added except where noted otherwise.

**I. The Proposed Combination of Eichert, Forslow and Thompson Does Not Render Claims 1-45 Unpatentable**

**A. Independent Claims 1, 10, 19, 28, 34 and 40**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Eichert, Forslow and Thompson does not disclose or suggest at least the limitation of “associating said at least one policy only with a particular one of said plurality of access point groups,” as recited by the Applicant in independent claim 1.

The Office Action states the following:

Consider claim 1, 28, 33, Eichert et al. discloses a method for hardware acceleration in a wired local area network, the method comprising:

creating at least one policy to be distributed among at least one of a plurality of access point groups (the system administrator inputs instructions representing policy - Figure 3 -: Column 3, Lines 42-57; Column 7, Lines 1-7; Column 8, Lines 31-42; Abstrac [sic]; associating said at least one policy with only a particular one of said access point groups (policy is distributed to the different groups of network devices and end systems - Figures 1 and 3 - Column 4, Lines 1-18; Column 8, Lines 31-42 & 56-63); and distributing said associated at least one policy to at least one access point in said particular one of the access point groups (policy is distributed to the network devices and end systems - Figures 1 and 3 - Column 4, Lines 1-18; Column 8, Lines 31-42 & 56-63; Column 9, Lines 11-26).

However, Eichert et al. discloses that this administration of a network occurs in a wired network such as a LAN or WAN, and fails to disclose that this happens in a hybrid wired/wireless network such as a WLAN.

In related prior art, Forslow discloses a centralized administration of policies to one [sic] or more routers which act as access points to wireless users (Abstract; Page 4, Paragraph 0066; Page 5, Paragraph 0088; Column 6, Lines 0091 & 0097- Figures 1-2).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Forslow with those of Eichert et al. because it is desirable to implement a policy management system that can be dynamically controlled in a wireless network, due to their wide popularity and the ever increasing mobility of society.

Eichert modified by Forslow does not specifically mention that the policy distributed with a particular one of the plurality of the access points. However, Thompson teaches the policy distributed with a particular one of the plurality of the access points (0041, 0051, 0116, 0120). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Thompson with Forslow with those of Eichert et al. modified by Forslow, in order to enable a network infrastructure to support multiple Wireless Service Providers (WSP) and their customers and allow a plurality of WSP's to utilize a common set of access points to provide service to a potentially overlapping set of customers.

See Office Action at pages 3-5. Initially, the Applicant points out that even though Eichert discloses a plurality of network devices in Figure 1, Eichert does not disclose or suggest a "plurality of access point groups", where, obviously, an access point group will include a plurality of devices. The Applicant further points out that Figures 1 and 3 of Eichert do not disclose or suggest that a policy is associated only with a particular access point group, as recited in Applicant's claim 1. For example, Figure 1 of Eichert illustrates a schematic diagram of a general network and its connected network devices. See Eichert, col. 6, lines 47-48. Furthermore, in order to implement the system policy, Eichert discloses that a network manager uses a single management station, such as the management station 100 of Figure 1, in order to specify policy for a network. See *id.* at Figure 1 and col. 2, lines 46-47.

Figure 3 of Eichert describes in greater detail how the management station 100 handles policies. For example, Eichert discloses that an active packet is created based on the input rules describing the policy. *See id.* at col. 8, lines 31-55 and Figure 3. After the active packet is created, encoded, and signed, the packet (or an instruction to retrieve the packet) is transferred to a network device. *See id.* Figure 3, step 370. In other words, Eichert handles policy processing by using active packets which are communicated by the management station to a network device. Eichert does not disclose a plurality of access point groups and associating policy with a particular one of the access point groups, as recited in Applicant's claim 1.

To summarize, Eichert discloses that a policy is created for the entire network. *See* Eichert at col. 2, lines 47-48; col. 3, lines 41-43. In other words, the policy is associated with all of the network devices of Eichert's network. Even if the created policy is distributed to not one but a plurality of enforcement devices, the fact remains that the distributed policy is the same for the entire network. Since Appellant's claim 1 recites a plurality of access point groups, this means that "a particular one of said access point groups" encompasses less than the entire number of network devices. In other words, "associating said at least one policy only with a particular one of said plurality of access point groups" results in associating the policy only with a particular group of access points (i.e., a subset of all network devices), and not with all network devices, as disclosed by Eichert. Forslow does not overcome this deficiency of Eichert.

The Examiner concedes the following in the Office Action:

Eichert modified by Forslow does not specifically mention that the policy distributed with **a particular one of the plurality of the access points**.

(See Office Action at p. 4, emphasis added.) Firstly, the above statement by the Examiner does not correctly state the deficiencies of the combination of Forslow and Eichert. More specifically, Applicant's claim 1 recites "associating said at least one policy only with **a particular one of said plurality of access point groups**", and it does not recite "a particular one of the **plurality of access points**" (as suggested by the Examiner). The distinction is important. While the Examiner's statement of "a particular one of the plurality of access *points*" means a particular (i.e., a single) access point, Applicant's claim recitation of a "plurality of access point *groups*" means a particular access point *group* (obviously, an access point group will include a plurality of access points). The Examiner then relies for support on paragraphs 0041, 0051, 0116, and 0120 of Thompson.

Secondly, Thompson does not overcome the above deficiencies of Forslow and Eichert since Thompson also does not disclose "associating said at least one policy **only with a particular one of said plurality of access point groups**", as recited in Applicant's claim 1. Thompson discloses a system and method for providing access to multiple wireless service providers (WSPs) on a shared network infrastructure. The system includes a plurality of access points (APs) coupled to a network which may be distributed in airports, mass-transit stations, businesses, etc.

Thompson, at *paragraph 0041*, discloses a plurality of virtual APs, where a virtual AP may comprise access point functionality implemented in software that appears as a physical AP to a portable computing device (PCD). Thompson, at *paragraph 0051*, discloses that each location authority, (e.g., an airport authority) can deal with one "master concession", who is responsible for building and maintaining the RF infrastructure, manages the RF environment, and sub-leases this infrastructure to the other providers. Thompson, at *paragraph 0116*, discloses that the access point 120 (Figs. 1 and 4), to which the user has connected, may transmit known geographic location information to the network (e.g., to a wireless service provider on the network). The known geographic location information may originate from the AP 120 or from the PCD 110 of the user. Thompson, at *paragraph 0120*, discloses that when the APs 120 are located in an airport, the user having a low access level, e.g., the user whose identification information is not known, may be granted access to certain local resources, such as coffee shops, bookstores, and advertising on the local LAN at the airport, but may not be provided with Internet access.

In this regard, Thompson (at paragraphs 0041, 0051, 0116, and 0120, or any remaining paragraphs for that matter) is still deficient as it does not disclose "associating said at least one policy only with a particular one of said plurality of access point groups", as recited in Applicant's claim 1.

Additionally, in proposing to combine Forslow and Eichert with Thompson, the Examiner fails to provide "articulated reasoning with some rationale underpinning to

support the legal conclusion of obviousness” in the detailed manner described in KSR. Specifically, the Examiner is required to provide “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness.” *See KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) quoting *In re Kahn*, 441 F.2d 997,988 (CA Fed. 2006). Put another way, the Examiner should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR*, 127 S. Ct. at 1741. The Examiner should make “explicit” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.” *Id.*

The Examiner attempts to support the combination of Forslow, Eichert, and Thompson as follows:

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Thompson with Forslow with those of Eichert et al. modified by Forslow, in order to enable a network infrastructure to support multiple Wireless Service Providers (WSP) and their customers and allow a plurality of WSP's to utilize a common set of access points to provide service to a potentially overlapping set of customers.

(*See id.*, p. 4-5.) This unsupported, conclusory allegation does not provide “articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” in the detailed manner described in KSR. Instead, the Office Action appears to be proposing the combination based solely on improper hindsight.



**However, allowing “a plurality of WSP's to utilize a common set of access points to provide service to a potentially overlapping set of customers” is not an element recited in Applicant's claim 1, and it is not the deficiency of Forslow and Eichert, which Thompson allegedly cures.** The generic benefit of “to enable a network infrastructure to support multiple Wireless Service Providers (WSP) and their customers and allow a plurality of WSP's to utilize a common set of access points” is not an articulated reasoning with a rational underpinning, as required by the MPEP. As such, the rejections based on the proposed combination of Forslow, Eichert, and Thompson.

Accordingly, the proposed combination of Eichert, Forslow and Thompson does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 10, 19, 28, 34 and 40 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 10, 19, 28, 34 and 40 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-9, 11-18, 20-27, 29-33, 35-39 and 41-45**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 10, 19, 28, 34 and 40 under 35 U.S.C. § 103(a) as being

unpatentable over Eichert in view of Forslow in view of Thompson has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-9, 11-18, 20-27, 29-33, 35-39 and 41-45 depend from independent claims 1, 10, 19, 28, 34 and 40, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-9, 11-18, 20-27, 29-33, 35-39 and 41-45.

In general, the Office Action makes various statements regarding claims 1-45 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-45 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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